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10/687,474

10/14/2003

Shahla C. Cisneros

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PATENT DOCKET ADMINISTRATION  
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EXAMINER

HARPER, TRAMAR YONG

ART UNIT

PAPER NUMBER

3714

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/687,474	<b>Applicant(s)</b> CISNEROS ET AL.	
	<b>Examiner</b> TRAMAR HARPER	<b>Art Unit</b> 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/20/09</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Examiner acknowledges receipt of amendments filed 02/13/09. Examiner acknowledges Request for Continued Examination filed 02/13/09. The arguments set forth are addressed herein below. Claims 1-14 remain pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 & 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Nowhere in the specification or originally filed claims does it explicitly disclose initiating a game from the gaming application at a time other than a time of transmission of the gaming application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 2, 8, 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over NTN in view of Junkin (US 6,193,610) in further view of Allen (US 2002/0119824).**

**Claims 1, 2, 8, 12 and 13:** NTN discloses (page 2), 'The NTN Network is North America's largest...interactive television network. [The]...network broadcasts a variety of interactive multi-player sports and trivia games...365 days per year...' (equivalent to applicant's limitation of interactive gaming). NTN further discloses (page 4), "[NTN network]...develop[s] and produce[s] original programming at our facilities...for distribution to our sites...We can provide simultaneous transmission of up to 16 live events for interactive play and a multitude of interactive games and other programs, allowing distribution of different programs to customers in different geographical locations" (equivalent to applicant's limitation of a central broadcast center over a first communications network and a game system residing within the central broadcast center). NTN further discloses (page 4) that they, "...use either satellite or Internet service providers to distribute our programming to our customers" (equivalent to applicant's limitation of having a plurality of users who access the gaming system via the first communications network). NTN discloses (page 3), "The NTN Network features games licensed pursuant to a perpetual non-exclusive license agreement from Buzztime. [They]...generally broadcast premium trivia competitions ... and live interactive sports-oriented play-along games..." (equivalent to applicant's limitation of providing a plurality of games accessible through the gaming system). NTN then discloses (page 3), "The NTN Network's interactive programming permits players

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to compete in real-time within each location and to be ranked against players in all locations throughout North America. At the conclusion of each game broadcast, players' scores are calculated and top scores are sent via phone lines to our broadcast center...Within minutes, rankings for each location are tabulated and displayed and rankings and scores for the top locations are transmitted back to all locations via the NTN Network for display" (equivalent to applicant's limitation of a scoring protocol where scoring is provided in real-time back to the gaming system via a second communication network).

NTN also discloses (page 5), "Web servers...used to connect the user to our web sites...[and] Login and registration servers...[that] allow a user to register and/or log in to our web sites" (equivalent to applicant's limitation of submitting user identification). NTN further discloses (page 7) "Countdown", one of their interactive trivia games.

Countdown is one of NTN's longest-running trivia games, and it is well known by people familiar with the art, that Countdown uses a time-based scoring component. The game uses 15 questions, each with five possible answers, on a variety of topics. Players can earn up to 1,000 points per question based on how fast they answer; the number of points decrease as time passes. Clues are given to help the player eliminate incorrect choices, with the third clue usually alluding to what the correct answer is. The answer is given once time runs out. A score of 15,000 is considered a "perfect" score.

Furthermore, the method of interactive gaming and method of calculating a time based component disclosed by the applicant merely discloses the steps of the interactive

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gaming devices operation and since each element must be implemented in order to make the device, the method would have at least been obvious in view of the device.

However, NTN fails to explicitly disclose a bonus score component or different skill levels. Junkin discloses (column 7, 35-39) that, "The player score calculation may provide for the weighting of certain statistics depending on the importance, difficulty or occurrence rate of each statistic. In addition, the player score may be uniquely tailored to accommodate a particular event. Junkin further discloses, (column 11, lines 17-24) that, "...a certain skill factor is involved...The menu...allows the participant to be .involved in different levels of the interactive game. The may be a beginners level, intermediate level and advanced level." The advantage of using bonus scoring and different skill levels, Junkin writes, (column 1, lines 33-44) is, "...increasing the enjoyment of an interactive game...[and] increasing the level of skill and knowledge of a participant..." This is evidence that one of ordinary skill in the art would have reason/motivation/suggestion to use bonus scoring and different skill levels in an interactive television gaming system for the increasing enjoyment, skill level, and knowledge of the participant. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of NTN with the bonus scoring and different skill level component as described by Junkin for the purpose of increasing the enjoyment, skill level, and knowledge of the participant.

In regards to the applicant's amended claim of having the gaming application and plurality of games stored on the set top box or gaming device/receiver, NTN's SEC filing also meets this argument (page 9, last paragraph) in stating that, "...competition within

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the interactive television space comes from three or four existing game providers that are also seeking to provide games on digital set top boxes, either as single play or networked games... most of these competitors can only offer stand-alone single player games on current set-tops. Thus, a stand-alone game would not require a network, and as such would require that the game and gaming application be located at the receiver—in this case, the set top box. This is evidence that the teaching and motivation for storing games and gaming applications on the set-top existed at the time the invention was made. In this case, the applicant is substituting a known prior art element—that is, storing a plurality of games and a gaming application on a set top box—for another—i.e. NTN's live game broadcast to the set top box, to yield predictable results.

NTN/Junkin discloses the above, but excludes having a plurality of games accessible at a time elected by a user of the gaming application other than a time of transmission of the gaming application. NTN's reference teaches a plurality of live games that are broadcast. The NTN reference does not suggest that users cannot play games whenever they choose--yet rather, may have to wait to join in a game. However, Allen teaches an interactive system of network gaming system for providing tournaments comprising different types of games at multiple sites. Allen teaches it is well known in the art to have competitions on games between players on the same game at the same time or between players on the same game at different times via a high score system (Abstract, ¶ 2). The system comprises of a networked gaming machines linked to gaming servers. The gaming machines may be configured for

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different games such as racing, golf, puzzles, and trivia. The tournament network may be provided amongst games of different types or the same type. The gaming machines may range from personal computers to handheld gaming device (§17). Types of tournament involve long term tournament over periods of time such as 2 or more days, wherein updates in regards to players' performances are sent to the appropriate tournament servers (§22). The servers offer to the player a tournament choice, a game choice, a region, the duration of the tournament, the skill level, and other related information. **The tournament includes player rankings and can be a trivia based tournament. It can be a tournament wherein a player has to participate in a certain amount of games within a certain amount of days, wherein if a player falls short the required number of games, the player is subject to a decrease in score or disqualification (§ 28-33). This clearly implies allowing a player to play a game application at a time other than transmission e.g. at any time the player desires within the requirements of the tournament.** Allen further discloses trivia question tournaments conducted in real-time, e.g. updates of correct and incorrect answers are updated in real-time. Furthermore, such real-time tournaments can be combined into long term tournaments, wherein the real-time results are compiled overtime with the overall tournament decisions being based over the entire long term tournament (§ 51-53). **Allen discloses the use of bonus questions for trivia games and furthermore disclosing updating or replacing games with new games to each of the gaming machines by downloading it via the servers and updating trivia questions (§64, 68). This is another indication of downloading or broadcasting a game to a**



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**gaming machine and then at anytime playing the game other than the transmission of the game.** It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the gaming system of NTN in view of Junkin with the ability to play a game at a player desired time during a tournament or competition as taught by Allen to provide a more user friendly/accommodating system. Such a modification, provides a player with more convenient opportunities to participate in a long term gaming environment e.g. a player is not constricted to the start of a tournament for participation and thus player enjoyment is increased.

**Claims 3 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over NTN in view of Junkin in further view of Allen, and further in view of Crockett et al (US 2004/0039631).**

**Claims 3 and 14:** NTN/Junkin/Allen discloses bonus scoring, but does not explicitly disclose the bonus score components. Crockett discloses (pages 3-4, paragraph [0038]), "...[a] weighted score is calculated by multiplying the...weighted score...by the ratio of the...score over the maximum possible...score." The advantage of calculating the bonus score in this way, Crockett states (page 1, paragraph [0004]), "...enable[s] an organization to attract, retain, and develop desired customers and optimize the value of each of these customer relationships." This is evidence that one of ordinary skill in the art would have reason/motivation/suggestion to use these components in calculating the bonus score in an interactive television gaming system for the purpose of attracting, retaining, and developing customers. Therefore, it would be obvious to anyone of

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ordinary skill in the art at the time of the invention was made to modify NTN when modified by Junkin with the bonus score component as claimed for the purpose of customer attraction, retention and development, as suggested by Crockett.

As per claim 3 the method of calculating a bonus score component disclosed by the applicant merely discloses the steps of the interactive gaming device's operation, and since each element must be implemented in order to make the device, the method would have been obvious in view of the device.

**Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over NTN in view of Junkin in further view of Allen, and further in view of Walker.**

**Claims 4-7:** The method of initiating a game, generating a plurality of questions, initiating a question/answer sequence, and managing the questions, as disclosed by the applicant, merely discloses the steps of performing these functions, and since each element must be implemented in order to make the device, the method would have been obvious in view of the device.

NTN/Junkin/Allen fails to explicitly in detail a question database and/or a scoring database. NTN also discloses (page 5) that the game servers, "execute the games and collect user statistics...") and Allen discloses the use tracking scoring statistics (leaderboards), updating trivia questions to the game devices, and real-time updates (see above). Walker discloses (column 10, lines 50-54) that, "Linked to the tournament database would be a database devoted to storing questions and answers, from which trivia tournaments would extract questions." He further discloses, (column 12, line 24), "Databases of...scores..." The advantage of using a database, Walker writes (column

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10, lines 60-67), is that, "...[the] last database field is especially important given the time and expense associated with creating questions and answers, since the re-use of some questions is almost inevitable. While tournament organizers obviously do not want to have players seeing questions for the second time, they also do not want to throw out a question that only a small percentage of potential tournament participants have seen. Databases provide the best compromise...". The advantage of using a score database, Walker writes (column 12, lines 24-25), is to, "...allow [players]...to check the comparability of their scores." This is evidence that one of ordinary skill in the art would find a reason/motivation/suggestion to use a question database to help eliminate the time and expense of generating questions, to prevent the re-use of question, and to prevent the loss of questions, as well as using a score database to allow players to compare their scores. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of NTN by implementing the question and score databases as described by Walker for the purpose of eliminating the time and expense associated with generating questions, to prevent the re-use of questions, and to prevent the loss of questions, and to allow players to compare their scores.

### ***Response to Arguments***

Applicant's arguments filed 02/13/09 have been fully considered but they are not persuasive.

In regards, to the 112 rejection, the rejection is maintained. Applicant relies on excerpts out of the specification taken out of context. Paragraph 30 states, that, "the

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questions and gaming application for playing the trivia game reside in the user's STB" and paragraph 31 states that, "approximately 100 questions per level may be provided to a user periodically." It is unclear as how the applicant can correlate the two statements to indicate that a player can play the game other than at a time of transmission of the gaming application. One can interpret the above to mean that the questions are provided periodically or transmitted to the gaming machine periodically in real-time. Furthermore when considering paragraph 30 in its entirety it states,

"A data flow for a system according to the present invention is shown in Figure 1A. A gaming system 25 includes a question database 12 for use with a game application 14, such as an application for a trivia game. The gaming system 25 transmits data from the question database 12 and the trivia application 14 to a real-time update server 16. The update server 16 transmits data to an uplink server 18 that relays the data to a satellite 20. The satellite 20 then transmits the data from the question database 12 and/or game application 14 to a user's television STB 22. The questions and gaming application for playing the trivia game reside in the user's STB 22. The user may then interactively review the questions and provide answers via the STB 22. Questions are then asked and answers evaluated from the STB 22. A central broadcast center 10 includes, inter alia, the gaming system 25, the uplink server 18, the real time server 16 and transaction server 24."

The Examiner interprets the above as a sequence of steps e.g. the satellite transmits the data from the question data and/or game application to the user's STB. Now, the

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questions reside in the user's STB. The player after transmission then can review and answer questions. This is simply stating that a player can review and answer question after the game data is transmitted, but not "other than at the time of the transmission". For example, if the specification indicated that at any time after the question are stored on the STB the player can answer question that would be disclosure for initiating the game at a time other than transmission. However, when reading the above excerpt one skilled in the art would determine it to simply disclose that subsequent to transmission of the game data the player initiates the game. As such the 112 rejection is maintained.

Furthermore if applicant relies on paragraph 30 at least to disclose playing a game other at the time of transmission, one skilled in the art would interpret any reference that teaches transmitting game data via a server and subsequent to transmission initiating a game to read on playing a game other than at the time of transmission because you cannot play a game while it is being transmitted.

Applicant furthermore argues the limitation initiating the game from the gaming application at a time other than a time of transmission of the gaming application primarily in regards to NTN and Allen. With respect to NTN, applicant notes that not only is the tournament of NTN held in real-time but being transmitted to various sites at the same time as the game played. **The examiner contends that even through the tournament is held in real time that such a tournament could be over a extend period of time such as a week etc. "Real-time" is not limited to instantly especially since throughout the applicant's specification the game is considered**

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**played and updated in "real-time" but argued to be capable of being played at any time (see paragraphs 30-32).**

In regards to Allen, applicant argues that there is no broadcast at all of a gaming application in the gaming devices of Allen. Examiner respectfully disagrees, Allen teaches that at least updates to the games are broadcasted to the gaming machines. Some features include updates to tracks of racing games, courses for golf games, puzzle and trivia data are sent to the amusement game device. Allen further teaches that upon initiating of the tournament customized games are provided to the gaming machines for use in the specific type of defined tournament (paragraphs 31-34, 51). Allen furthermore teaches that a tournament may be based on completing a number of games within a period of time such as days, which clearly implies initiating the gaming application at a time other than transmission. At least in this regards the combination of references meet the current limitations.

### ***Conclusion***

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.129(a) and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.129(a). Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the submission under 37 CFR 1.129(a). See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TRAMAR HARPER whose telephone number is (571)272-6177. The examiner can normally be reached on 7:30am - 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ronald Laneau/  
Primary Examiner  
Art Unit 3714

TH

05/25/09